

AMENDED IN ASSEMBLY MAY 14, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1971

Introduced by Assembly Member Bocanegra

February 19, 2014

An act to add and repeal Article 3.3 (commencing with Section 20119) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to best value procurement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1971, as amended, Bocanegra. ~~Public contracts: school~~ *School districts: competitive bidding: best value: value procurement: pilot program.*

The Local Agency Public Construction Act requires the governing board of any school district to let any contract for a public project, as defined, involving an expenditure of \$15,000 or more, to the lowest responsible bidder that gives security as the board requires, or else reject all bids.

This bill would ~~authorize the~~ *establish a pilot program to authorize the Los Angeles Unified School District and 3 other unspecified school districts to use, before January 1, 2017, a best value procurement method for bid evaluation and selection for public projects that exceed \$1,000,000 to be determined by the best value for the school district.* ~~\$1,000,000.~~ The bill would establish various requirements applicable to the use of the best value procurement method ~~for the evaluation and selection of public projects by school districts~~ under this authorization. *The bill would require a school district that uses the best value*

procurement method to submit an interim and final report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim and final report to the appropriate policy and fiscal committees of the Legislature on the use of the procurement method pursuant to the bill, in accordance with a specified schedule. These provisions would be repealed on January 1, 2020.

This bill would make legislative findings and declarations as to the necessity of a special statute for a limited number of school districts of varying sizes, including, but not limited to, the Los Angeles Unified School District.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.3 (commencing with Section 20119) is
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract
3 Code, to read:

4
5 Article 3.3. ~~School Districts—Best Districts—Best Value~~
6 Procurement Pilot Program
7

8 20119. (a) It is the intent of the Legislature to enable school
9 districts to use cost-effective options for building and modernizing
10 school facilities. The Legislature has recognized the merits of the
11 best value procurement method process in the past by authorizing
12 its use for projects undertaken by the University of California.

13 (b) The Legislature also finds and declares that school districts
14 using the best value procurement method require a clear
15 understanding of the roles and responsibilities of each participant
16 in the best value process. As reflected in the University of
17 California report to the Legislature, the benefits of a best value
18 procurement method include a reduction in contract delays, change
19 orders, and claims producing a savings in both contract costs and
20 administration.

21 (c) It is the intent of the Legislature to provide an optional,
22 alternative procedure for bidding and building school construction
23 projects.

24 (d) In addition, it is the intent of the Legislature that the best
25 value procurement method is not intended to change in any manner

1 any guideline, criteria, procedure, or requirement of the governing
2 board of the school district to let any contract for a project to the
3 lowest responsible bidder or else reject all bids.

4 20119.1. As used in this article:

5 (a) “Best value” means a procurement process whereby the
6 selected bidder may be selected on the basis of objective criteria
7 for evaluating the qualifications of bidders with the resulting
8 selection representing the best combination of price and
9 qualifications.

10 (b) “Best value contract” means a *competitively bid* contract
11 entered into pursuant to the provisions of this article.

12 (c) “Best value contractor” means a properly licensed person,
13 firm, or corporation that submits a bid for, or is awarded, a best
14 value contract.

15 (d) “Demonstrated management competency” means the
16 experience, competency, capability, and capacity of the proposed
17 management staffing to complete projects of similar size, scope,
18 or complexity.

19 (e) “Financial condition” means the financial resources needed
20 to perform the contract. The criteria used to evaluate a bidder’s
21 financial condition shall include, at a minimum, capacity to obtain
22 all required payment bonds, and required insurance.

23 (f) “Labor compliance” means the ability to comply with, and
24 past performance with, contract and statutory requirements for the
25 payment of wages and qualifications of the workforce. The criteria
26 used to evaluate a bidder’s labor compliance shall include, at a
27 minimum, the bidder’s ability to comply with the apprenticeship
28 requirements of the California Apprenticeship Council and the
29 Department of Industrial Relations, its past conformance with such
30 requirements, and its past conformance with requirements to pay
31 prevailing wages on public works projects.

32 (g) “Project” has the same meaning as “public project” ~~is as~~
33 defined in subdivision (c) of Section 22002.

34 (h) “Qualifications” means financial condition, relevant
35 experience, demonstrated management competency, labor
36 compliance, the safety record of the bidder, and to the extent
37 relevant, the preceding qualifications as they pertain to all
38 subcontractors proposed to be used by the bidder for designated
39 portions of the work.

1 (i) “Relevant experience” means the experience, competency,
2 capability, and capacity to complete projects of similar size, scope,
3 or complexity.

4 (j) “Safety record” shall be deemed “acceptable” if its experience
5 modification rate for the most recent three-year period is an average
6 of 1.00 or less, and its average total recordable injury or illness
7 rate and average lost work rate for the most recent three-year period
8 do not exceed the applicable statistical standards for its business
9 category, or if the bidder is a party to an alternative dispute
10 resolution system as provided for in Section 3201.5 of the Labor
11 Code. If the experience modification rate for the most recent
12 three-year period is or was 1.00 or higher, a bidder may attach a
13 letter of explanation that the school district may review and take
14 into consideration when evaluating the bidder’s acceptable safety
15 record.

16 (k) (1) “Skilled and trained workforce” means a workforce that
17 meets both of the following criteria, as applicable:

18 (A) All the workers are either registered apprentices or skilled
19 journeypersons.

20 (B) (i) As of January 1, 2015, at least 30 percent of the skilled
21 journeypersons are graduates of an apprenticeship program for the
22 applicable occupation that was either approved by the Chief of the
23 Division of Apprenticeship Standards pursuant to Section 3075 of
24 the Labor Code or located outside California and approved for
25 federal purposes pursuant to the apprenticeship regulations adopted
26 by the federal Secretary of Labor.

27 (ii) As of January 1, 2016, at least 45 percent of the skilled
28 journeypersons are graduates of an apprenticeship program for the
29 applicable occupation that was either approved by the Chief of the
30 Division of Apprenticeship Standards pursuant to Section 3075 of
31 the Labor Code or located outside California and approved for
32 federal purposes pursuant to the apprenticeship regulations adopted
33 by the federal Secretary of Labor.

34 (iii) As of January 1, 2017, at least 60 percent of the skilled
35 journeypersons are graduates of an apprenticeship program for the
36 applicable occupation that was either approved by the Chief of the
37 Division of Apprenticeship Standards pursuant to Section 3075 of
38 the Labor Code or located outside California and approved for
39 federal purposes pursuant to the apprenticeship regulations adopted
40 by the federal Secretary of Labor.

(2) A school district and a contractor are not required to track the percentage of journeypersons that are graduates of an apprenticeship program if the governing board of the school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project and complies with Section 2500.

20119.2. (a) *This article provides for a pilot program for four school districts of different sizes to use best value procurement for projects over one million dollars (\$1,000,000).*

(b) The governing ~~board~~ boards of ~~any~~ the following four school district, districts, for projects over one million dollars (\$1,000,000), before January 1, 2017, may use the best value procurement method in accordance with this ~~article~~ article:

(1) *The Los Angeles Unified School District.*

(2) *A small school district, ____.*

(3) *A medium-sized school district, ____.*

(4) *A large school district, ____.*

~~(b)~~

(c) The governing board of any school district shall let any contract for a project pursuant to this article to the selected bidder that represents the best value or else reject all bids.

~~(e)~~

(d) The bidder may be selected on the basis of the best value to the governing board of the school district. In order to implement this method of selection, the governing board of the school district shall adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders that ensure the best value selections by the school district are conducted in a fair and impartial manner. These procedures and guidelines shall conform to this article and shall be mandatory for the school district when using best value selection.

~~(d)~~

(e) If the governing board of the school district deems it to be for the best interest of the school district, the governing board of the school district ~~may~~, on the refusal or failure of the successful bidder for a project to execute a tendered contract, *may* award it to the second bidder that represents the best value. If the second bidder fails or refuses to execute the contract, the governing board of the school district may likewise award it to the third bidder.

1 20119.3. The governing board of the school district shall
2 proceed in accordance with the following when awarding best
3 value contracts under this article:

4 (a) The governing board of the school district shall prepare a
5 solicitation for bids and give notice pursuant to Section 20112.

6 (b) The governing board of the school district shall establish a
7 procedure to prequalify bidders pursuant to Sections 20101 and
8 20111.6. Information submitted by the bidder as part of the
9 evaluation process shall not be open to public inspection to the
10 extent that information is exempt from disclosure under the
11 California Public Records Act (Chapter 3.5 (commencing with
12 Section 6250) of Division 7 of Title 1 of the Government Code).

13 (c) Each solicitation for bids shall do all of the following:

14 (1) Invite prequalified bidders to submit sealed bids in the
15 manner prescribed by this article.

16 (2) Include a section identifying and describing the following:

17 (A) Criteria that the governing board of the school district will
18 consider in evaluating the qualifications of the bidders.

19 (B) The methodology and rating or weighting system that will
20 be used by the governing board of the school district in evaluating
21 bids and specifically whether proposals will be rated according to
22 numeric or qualitative values. *bids*.

23 (C) The relative importance or weight assigned to the criteria
24 for evaluating the qualifications of bidders identified in the request
25 for bids.

26 (d) Final evaluation of the best value contractor shall be done
27 in a manner that prevents *the identity of the bidders and the cost*
28 or price information from being revealed to the committee
29 evaluating the qualifications of the bidders prior to completion
30 and announcement of that committee's decision. *A meeting to*
31 *evaluate bids shall be open to the public.*

32 20119.4. Selection of the best value contractor shall be made
33 as follows:

34 (a) (1) The governing board of the school district shall evaluate
35 the qualifications of the bidders based solely upon the criteria set
36 forth in the solicitation documents, and shall assign a qualification
37 score to each bid.

38 (2) Factors in determining a qualification score shall include,
39 but are not limited to, price, relevant experience, skilled and trained

workforce, and acceptable safety record and shall be weighted in accordance with the following:

(A) At least 50 percent of the total weight or consideration shall be given to the following factors: relevant expertise, skilled and trained workforce, and acceptable safety record. A factor listed in this subparagraph shall not make up less than 15 percent of the total weight or consideration.

(B) No more than 50 percent of the total weight or consideration shall be given to price. A bidder that qualifies as a certified small business shall receive a 5-percent bid preference.

(b) The award of the contract shall be made to the bidder whose bid is determined, by the school district in writing, to be the best value to the governing board of the school district. To determine the best value contractor, the governing board of the school district shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

(c) The governing board of the school district shall issue a written decision of its contract award.

(d) Upon issuance of a contract award, the governing board of the school district shall publicly announce its award identifying the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the qualifications criteria for evaluating the bidders listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The names of the remaining responsive bidders may be concealed upon the request of the bidders, in which case the governing board of the school district shall determine an alternative method for publicly announcing its award of the contract. The contract file shall include documentation sufficient to support the decision to award.

20119.5. (a) (1) A school district that uses the best value procurement method pursuant to this article shall submit to the Legislative Analyst the following reports completed by an independent third party:

(A) An interim report on or before July 1, 2017.

(B) A final report on or before January 1, 2019.

1 (2) A report shall include, but is not limited to, the following
2 information:

3 (A) A description of the projects awarded using the best value
4 procedures.

5 (B) The contract award amounts.

6 (C) The best value contractors awarded the projects.

7 (D) A description of any written protests concerning any aspect
8 of the solicitation, bid, or award of the best value contracts,
9 including the resolution of the protests.

10 (E) A description of the prequalification process.

11 (F) The criteria used to evaluate the bids, including the
12 weighting of the criteria and an assessment of the effectiveness of
13 the methodology.

14 (G) If a project awarded under this article has been completed,
15 an assessment of the project performance, to include a summary
16 of any delays or cost increases.

17 (b) (1) The Legislative Analyst shall submit an interim report
18 to the appropriate policy and fiscal committees of the Legislature
19 on the use of the best value procurement method by school districts
20 on or before January 1, 2018, and a final report on or before July
21 1, 2019. The report may include the information provided from
22 the school district reports pursuant to subdivision (a) and any
23 pertinent information that the Legislative Analyst deems instructive
24 in evaluating whether the best value procurement method should
25 be continued, expanded, or prohibited.

26 (2) The requirement for submitting a report imposed pursuant
27 to this subdivision is inoperative on January 1, 2020, pursuant to
28 Section 10231.5 of the Government Code.

29 ~~20119.5.~~

30 20119.6. This article shall remain in effect only until January
31 1, ~~2022~~, 2020, and as of that date is repealed, unless a later enacted
32 statute, that is enacted before January 1, ~~2022~~, 2020, deletes or
33 extends that date.

34 SEC. 2. The Legislature finds and declares that a special law
35 is necessary and that a general law cannot be made applicable
36 within the meaning of Section 16 of Article IV of the California
37 Constitution because of the need to establish a pilot project for a
38 limited number of school districts of varying sizes, including, but
39 not limited to, the Los Angeles Unified School District, to determine
40 the potential benefits and consequences of using best value

- 1 *procurement to facilitate infrastructure improvements and ease*
- 2 *fiscal impacts.*

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